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# Agriculture

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# Agriculture

## Agriculture; agricultural processors and produce dealers

Food and Agricultural Code §§ 55522.6, 55902.2, 56182.6, 56632.2 (new); §§ 55522.5, 56182.5 (amended).  
AB 1956 (Tanner); 1991 STAT. Ch. 733

Existing law requires processors<sup>1</sup> of farm products<sup>2</sup> and produce dealers<sup>3</sup> to obtain a license from the Director of Food and Agriculture and to pay a prescribed license fee.<sup>4</sup> Chapter 733 makes it a misdemeanor for an applicant for a license to pay less than the prescribed amount and provides that failure to pay the prescribed amount for two or more consecutive years will result in a tripling of the amount due.<sup>5</sup>

Under existing law, it is illegal for a licensed processor or produce dealer to continue to operate after it has changed its legal entity or has had its corporate status suspended by the Secretary of State.<sup>6</sup> Chapter 733 requires a licensee<sup>7</sup> which has changed its legal entity to notify persons who contracted with the former entity

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1. See CAL. FOOD & AGRIC. CODE § 55407 (West 1986) (definition of processor).

2. See *id.* § 55403 (West 1986) (definition of a farm product with respect to processors); § 56109 (West Supp. 1991) (definition of a farm product with respect to produce dealers).

3. See *id.* § 56808 (West 1986) (definition of produce dealer).

4. *Id.* § 55521 (West 1986) (requiring processor to be licensed); § 56181 (West 1986) (requiring produce dealer to be licensed); § 55522 (West 1986) (requiring application fee for a processor's license); § 56182 (West 1986) (requiring application fee for produce dealer's license). See *id.* § 55861 (West Supp. 1991) (listing application fee schedule for processor's license); § 56571 (West Supp. 1991) (listing annual application fee schedule for produce dealer's license). See generally *California Chicks Inc. v. Viebrock*, 25 Cal. App. 2d 638, 642, 62 Cal. Rptr. 269, 273 (1967) (holding a contract for chicken eggs unenforceable by the purchaser because he did not have a produce dealer's license during the formation of the contract).

5. CAL. FOOD & AGRIC. CODE §§ 55902.2, 56632.2 (enacted by Chapter 733). See *id.* § 55901 (West Supp. 1991) (limiting punishment for misdemeanor offenses for violation of section 55902.2 to not less than \$500 nor more than \$2000, or 1 year imprisonment in county jail, or both a fine and imprisonment); § 56631 (West Supp. 1991) (limiting punishment for misdemeanor offense for violation of Section 56632.2 to not less than \$500 nor more than \$2000, or 1 year imprisonment in county jail, or both a fine and imprisonment).

6. *Id.* §§ 55522.5(a)(1), 56182.5(a)(1) (amended by Chapter 733).

7. See *id.* § 55404.5 (West 1986) (definition of licensee as a processor); § 56109.5 (West 1986) (definition of licensee as a produce dealer).

before buying or handling any farm product from those persons.<sup>8</sup> Chapter 733 also prohibits the use of specified documents which identify the former entity, unless the new entity is conspicuously identified on the document.<sup>9</sup>

Under existing law, the corporate status of licensees may be suspended by the Secretary of State.<sup>10</sup> Chapter 733 provides that a suspension of the corporate status of a licensee by the Secretary suspends the license of that licensee by operation of law.<sup>11</sup>

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## Agriculture; pesticides

Food and Agriculture Code §§ 13130.3, 13131.1, 13131.2, 13131.3, 13131.4 (new); § 13127 (amended); § 13130 (amended and renumbered).

AB 1742 (Hayden); 1991 STAT. Ch. 1227

Existing law regulates the registration of pesticides<sup>1</sup> and requires that mandatory health effects studies<sup>2</sup> be conducted for registration.<sup>3</sup> Under existing law, before December 31, 1985, the

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8. *Id.* § 56182.5(a)(2) (amended by Chapter 733).

9. *Id.* §§ 55522.5(a)(3), 56182.5(a)(3) (amended by Chapter 733). *See id.* §§ 55522.5(a)(3) (amended by Chapter 733), 56182.5(a)(3) (amended by Chapter 733) (specifying documents which are associated with the purchase, consignment or brokerage of farm products).

10. CAL. CORP. CODE § 2205 (West 1990).

11. *Id.* §§ 55522.6(a), 56182.6(a) (enacted by Chapter 733). The former licensee must notify the Director of Food and Agriculture, in writing, within 15 days of the mailing of the suspension by the Secretary of State. *Id.* §§ 55522.6(a), 56182.6(a) (enacted by Chapter 733). Within 90 days of suspension, upon a showing of no substantial financial change, the former licensee may petition the Director to reissue the license. *Id.* §§ 55522.6(b), 56182.6(b) (enacted by Chapter 733).

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1. CAL. FOOD & AGRIC. CODE § 12815 (West 1986). *But see* Deukmejian v. Mendocino County, 36 Cal. 3d 476, 486, 638 P.2d 1150, 1156, 204 Cal. Rptr. 897, 903 (1984) (stating that the legislature has chosen a flexible system of pesticide regulation throughout the state to allow local concerns and conditions to be given paramount importance).

2. *See* CAL. FOOD & AGRIC. CODE § 13123(c) (West 1986) (definition of mandatory health effects study).

3. *Id.* § 13126 (West 1986).

Department of Food and Agriculture (Department) was required to identify 200 pesticide active ingredients which had the most significant data gaps<sup>4</sup> and widespread use, and which were suspected to be hazardous to humans.<sup>5</sup> Existing law required that the data gaps be filled before September 1, 1986.<sup>6</sup> Chapter 1227 provides that the Director must issue a final notice of data gaps required to be filled for all other pesticide active ingredients before January 1, 1994.<sup>7</sup>

Chapter 1227 requires the Director of Pesticide Regulation (Director) to notify registrants<sup>8</sup> of the data requirements for mandatory health effects studies for all other pesticide active ingredients before March 1, 1992.<sup>9</sup> Chapter 1227 mandates that each registrant must comply with specified procedures within 90 days notification of the data requirements.<sup>10</sup>

Chapter 1227 authorizes the Department, with the approval of the Office of Environmental Health Hazard Assessment, to determine that mandatory health effects studies are not required to evaluate specified pesticide active ingredients.<sup>11</sup> In the event that the State Department of Health Services does not concur with the determination of the Department, Chapter 1227 provides for the appointment of a panel to decide the issue.<sup>12</sup>

4. See *id.* § 13123(b) (West 1986) (definition of data gap).

5. *Id.* § 13127(a) (amended by Chapter 1227).

6. *Id.* § 13127(c)(1) (amended by Chapter 1227).

7. *Id.* § 13131.4(a) (enacted by chapter 1227).

8. See *id.* § 12755 (West 1986) (definition of registrant).

9. *Id.* § 13131.1(a) (enacted by Chapter 1227).

10. *Id.* § 13131.1(b) (enacted by Chapter 1227). Each registrant must do one of the following: (1) Inform the Department how the registrant will comply with the data requirements; or (2) file a written objection to all or part of the notice of data requirements, accompanied by supporting evidence and arguments. *Id.*

11. *Id.* § 13131.2(a) (enacted by Chapter 1227). The determination may apply only to those pesticide active ingredients other than those listed in section 13127(a) of the Food and Agriculture Code. *Id.* Also, this determination may be made only in accordance with one or more of the following criteria: (1) The ingredient has been classified as "Generally Recognized as Safe" by the United States Food and Drug Administration; (2) the study is impossible due to the nature of the ingredient; or (3) the department has toxicological data on file for assessing the potential adverse health effects of the ingredient. *Id.*

12. *Id.* § 13131.3 (enacted by Chapter 1227). A determination by the State Department of Health Services may be reversed by a panel consisting of appointees from the Director of Food and Agriculture, the Director of Pesticide Regulation, the State Director of Health Services, the Director of Industrial Relations, and the President of the University of California. *Id.*

Prior law authorized the Director of the Department to use the assessments imposed on registrants to cover the Department's expenses in filling data gaps.<sup>13</sup> Chapter 1227 eliminates the authority of the Director to use assessments for this purpose.<sup>14</sup>

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## Agriculture; roadside vegetation control

Food and Agricultural Code §§ 5501, 5502, 5503, 5504, 5505, 5506, 5507, 5508, 5509 (new).  
AB 1245 (Connelly); 1991 STAT. Ch. 737

Existing law allows state agencies to use economic poisons<sup>1</sup> to eradicate various pests.<sup>2</sup> Chapter 737 creates the Property Owners Roadside Vegetation Control Act which requires agencies<sup>3</sup> conducting roadside<sup>4</sup> vegetation control to provide certain information, upon request, to specified property owners.<sup>5</sup>

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13. 1990 Cal. Legis. Serv. ch. 432, sec. 1, (amending CAL. FOOD & AGRIC. CODE § 13127) (amended by Chapter 1227).

14. CAL. FOOD & AGRIC. CODE § 13127(d) (amended by Chapter 1227).

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1. See CAL. FOOD & AGRIC. CODE § 12753 (West 1986) (definition of economic poison). Economic poisons include chemicals which are used for regulating or destroying plants or pests, and which may be detrimental to man, animals or vegetation. *Id.*

2. *Id.* § 12754.5 (West Supp. 1991) (definition of pest). *Cf.* WASH. REV. CODE § 17.21.100 (1990) (requiring public entities which conduct roadside spraying to keep prescribed records and make them readily available to certain entities). See L.A. Times, Dec. 16 1988, § 1, at 2, col. 6 (home ed.) (reporting suspension of herbicide use along highways in northern California until environmental impact is studied). See generally Levin, *State Accused of Not Acting on Pesticides in Ground Water*, L.A. Times, February 13, 1989, § 1, at 3, col. 6 (home ed.) (criticizing Department of Food and Agriculture's policy to restrict spraying of pesticides only in pesticide management zones around tainted wells).

3. See CAL. FOOD & AGRIC. CODE § 5502(a) (enacted by Chapter 737) (definition of agency).

4. See *id.* § 5502(b) (enacted by Chapter 737) (definition of roadside).

5. *Id.* § 5504 (enacted by Chapter 737). The required information includes the date and proposed method of eradication, the frequency with which eradication will be conducted, and any other relevant information. *Id.* To make a request, the property owner's property must be adjacent to or contiguous with a roadway. *Id.* See *id.* § 5502(c) (enacted by Chapter 737) (definition of

Under Chapter 737, a property owner may request a meeting with representatives of an agency within thirty days of receipt of the information.<sup>6</sup> Chapter 737 further provides that an agency will not conduct vegetation control on that portion of the roadway affected by a property owner's request, until the agency provides the required information and thirty days have passed in which the property owner has not requested a meeting with a representative of the agency.<sup>7</sup> Finally, Chapter 737 allows property owners to seek judicial remedies to contest decisions by an agency or to enforce the provisions of Chapter 737.<sup>8</sup>

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property owner).

6. *Id.* § 5506(a) (enacted by Chapter 737).

7. *Id.* § 5505 (enacted by Chapter 737). If the property owner requests a meeting, the agency must meet with the property owner to develop a mutually agreeable plan to control the roadside vegetation. *Id.* § 5506(b) (enacted by Chapter 737). If the property owner does not fulfill the obligations under an agreement with an agency, the agency may resume vegetation control immediately. *Id.* § 5507 (enacted by Chapter 737). *Cf. County to Begin Spraying Herbicides on Roadside*, *Seattle Times*, June 14, 1991, at C3 (final ed.) (reporting that residents in King County, Oregon who do not wish to have the roadside adjacent to their property sprayed, may agree to control the vegetation themselves).

8. CAL. FOOD & AGRIC. CODE § 5509 (enacted by Chapter 737). The property owner may bring an action for writ of mandamus challenging the Agency's decision, or may request an injunction to restrain violation of this chapter. *Id.*

## Agriculture; violations of agricultural quarantines--penalty

Food and Agricultural Code § 5306 (amended).  
SB 539 (Alquist); 1991 STAT. Ch. 513

Under existing law, refusing to comply with quarantine regulations<sup>1</sup> adopted by the Director of Food and Agriculture<sup>2</sup> is unlawful.<sup>3</sup> Existing law also states that it is unlawful to possess, sell, or take any other action with regard to a plant or other thing subject to quarantine which has been imported or moved in violation of a quarantine.<sup>4</sup> Under prior law, in addition to civil penalties,<sup>5</sup> such violations of an agricultural quarantine were infractions for the first offense, and misdemeanors for a second offense committed within three years of the first violation.<sup>6</sup> Chapter 513 mandates that any violation of an agricultural quarantine regulation, including a first offense, shall be a misdemeanor.<sup>7</sup>

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1. See generally 3 CAL. CODE REGS. TIT. 3 §§ 3250-3427 (Barclays 1990) (designating various agricultural quarantines).

2. See CAL. FOOD & AGRIC. CODE § 102 (West 1986) (establishing and defining the position of Director of the Food and Agriculture Department).

3. *Id.* § 5306(a) (West Supp. 1991).

4. *Id.* § 5306(b) (West Supp. 1991).

5. See *id.* §§ 3510, 3511 (West Supp. 1991) (definition of allowable civil penalties).

6. 1982 Cal. Stat. ch. 899, sec. 3, at 3328 (enacting CAL. FOOD & AGRIC. CODE § 5309) (amended by Chapter 513).

7. CAL. FOOD & AGRIC. CODE § 5306(c) (amended by Chapter 513). Recently, two other states increased the penalty for agricultural quarantine violations. See ILL. ANN. STAT. ch. 5, para. 82 (Smith-Hurd Supp. 1991) (increasing the penalty from a petty offense to a business offense); ARIZ. REV. STAT. ANN. § 3-215(B) (West Supp. 1990) (increasing the penalty from a class three misdemeanor to a class two misdemeanor). See also MICH. COMP. LAWS ANN. § 286.224 (West 1979), MO. ANN. STAT. § 263.180 (Vernon Supp. 1991), VA. CODE ANN. § 3.1-188.29(A) (1983) (classifying agricultural quarantine violations as misdemeanors).